

AMENDED IN ASSEMBLY AUGUST 24, 2012

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 16, 2012

SENATE BILL

No. 1105

Introduced by Senator Lieu

February 16, 2012

An act to amend Section 4903.1 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, as amended, Lieu. Workers' compensation: liens.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing workers' compensation law authorizes the Workers' Compensation Appeals Board to determine and allow specified expenses as liens against any sum to be paid as compensation. Existing law requires, before issuing an award or approval of any compromise of claim, the determination of whether any benefits have been paid or services provided by specified entities.

This bill would require the appeals board to allow a lien for loss-of-time benefits paid by a self-insured employee welfare benefit plan, as defined.

This bill would incorporate additional changes in Section 4903.1 of the Labor Code proposed by SB 863 that would become operative only if SB 863 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4903.1 of the Labor Code is amended to
2 read:

3 4903.1. (a) The appeals board, arbitrator, or settlement
4 conference referee, before issuing an award or approval of any
5 compromise of claim, shall determine, on the basis of liens filed
6 with it pursuant to subdivision (b) or (c), whether any benefits
7 have been paid or services provided by a health care provider, a
8 health care service plan, a group disability policy, including a
9 loss-of-income policy, a self-insured employee welfare benefit
10 plan, or a hospital service contract, and its award or approval shall
11 provide for reimbursement for benefits paid or services provided
12 under these plans as follows:

13 (1) When the referee issues an award finding that an injury or
14 illness arises out of and in the course of employment, but denies
15 the applicant reimbursement for self-procured medical costs solely
16 because of lack of notice to the applicant's employer of his or her
17 need for hospital, surgical, or medical care, the appeals board shall
18 nevertheless award a lien against the employee's recovery, to the
19 extent of benefits paid or services provided, for the effects of the
20 industrial injury or illness, by a health care provider, a health care
21 service plan, a group disability policy, a self-insured employee
22 welfare benefit plan, or a hospital service contract.

23 (2) When the referee issues an award finding that an injury or
24 illness arises out of and in the course of employment, and makes
25 an award for reimbursement for self-procured medical costs, the
26 appeals board shall allow a lien, to the extent of benefits paid or
27 services provided, for the effects of the industrial injury or illness,
28 by a health care provider, a health care service plan, a group
29 disability policy, a self-insured employee welfare benefit plan, or
30 a hospital service contract. For purposes of this paragraph, benefits
31 paid or services provided by a self-insured employee welfare
32 benefit plan shall be determined notwithstanding the official
33 medical fee schedule adopted pursuant to Section 5307.1.

34 (3) (A) When the referee issues an award finding that an injury
35 or illness arises out of and in the course of employment and makes

1 an award for temporary disability indemnity, the appeals board
2 shall allow a lien as living expense under Section 4903, for benefits
3 paid by a group disability policy providing loss-of-time benefits
4 and for loss-of-time benefits paid by a self-insured employee
5 welfare benefit plan. Such lien shall be allowed to the extent that
6 benefits have been paid for the same day or days for which
7 temporary disability indemnity is awarded and shall not exceed
8 the award for temporary disability indemnity. No lien shall be
9 allowed hereunder unless the group disability policy *or self-insured*
10 *employee welfare benefit plan* provides for reduction, exclusion,
11 or coordination of loss-of-time benefits on account of workers'
12 compensation benefits.

13 (B) For purposes of this paragraph, "self-insured employee
14 welfare benefit plan" means any plan, fund, or program that is
15 established or maintained by an employer or by an employee
16 organization, or by both, to the extent that the plan, fund, or
17 program was established or is maintained for the purpose of
18 providing for its participants or their beneficiaries, other than
19 through the purchase of insurance, either of the following:

- 20 (i) Medical, surgical, or hospital care or benefits.
- 21 (ii) Monetary or other benefits in the event of sickness, accident,
22 disability, death, or unemployment.

23 (4) When the parties propose that the case be disposed of by
24 way of a compromise and release agreement, in the event the lien
25 claimant, other than a health care provider, does not agree to the
26 amount allocated to it, then the referee shall determine the potential
27 recovery and reduce the amount of the lien in the ratio of the
28 applicant's recovery to the potential recovery in full satisfaction
29 of its lien claim.

30 (b) When a compromise of claim or an award is submitted to
31 the appeals board, arbitrator, or settlement conference referee for
32 approval, the parties shall file with the appeals board, arbitrator,
33 or settlement conference referee any liens served on the parties.

34 (c) Any lien claimant under Section 4903 or this section shall
35 file its lien with the appeals board in writing upon a form approved
36 by the appeals board. The lien shall be accompanied by a full
37 statement or itemized voucher supporting the lien and justifying
38 the right to reimbursement and proof of service upon the injured
39 worker, or if deceased, upon the worker's dependents, the

1 employer, the insurer, and the respective attorneys or other agents
2 of record.

3 (d) The appeals board shall file liens required by subdivision
4 (c) immediately upon receipt. Numbers shall be assigned pursuant
5 to subdivision (c) of Section 5500.

6 (e) The changes made to this section by Senate Bill 457 of the
7 2011–12 Regular Session do not modify in any way the rights or
8 obligations of the following:

9 (1) Any health care provider to file and prosecute a lien pursuant
10 to subdivision (b) of Section 4903.

11 (2) A payor to conduct utilization review pursuant to Section
12 4610.

13 (3) Any party in complying with the requirements under Section
14 4903.

15 *SEC. 1.5. Section 4903.1 of the Labor Code is amended to*
16 *read:*

17 4903.1. ~~(a)~~—The appeals board, arbitrator, or settlement
18 conference referee, before issuing an award or approval of any
19 compromise of claim, shall determine, on the basis of liens filed
20 with it pursuant to ~~subdivision (b) or (c)~~ *Section 4903.05*, whether
21 any benefits have been paid or services provided by a health care
22 provider, a health care service plan, a group disability policy,
23 including a ~~loss of income~~ *loss-of-income* policy, a self-insured
24 employee welfare benefit plan, or a hospital service contract, and
25 its award or approval shall provide for reimbursement for benefits
26 paid or services provided under these plans as follows:

27 ~~(1)~~

28 (a) When the referee issues an award finding that an injury or
29 illness arises out of and in the course of employment, but denies
30 the applicant reimbursement for self-procured medical costs solely
31 because of lack of notice to the applicant's employer of his *or her*
32 need for hospital, surgical, or medical care, the appeals board shall
33 nevertheless award a lien against the employee's recovery, to the
34 extent of benefits paid or services provided, for the effects of the
35 industrial injury or illness, by a health care provider, a health care
36 service plan, a group disability policy, a self-insured employee
37 welfare benefit plan, or a hospital service contract.

38 ~~(2)~~

39 (b) When the referee issues an award finding that an injury or
40 illness arises out of and in the course of employment, and makes

an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract. ~~For purposes of this paragraph, benefits paid or services provided by a self-insured employee welfare benefit plan shall be determined notwithstanding the official medical fee schedule adopted pursuant to Section 5307.1.~~

~~(3)~~

(c) (1) When the referee issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss of time benefits. ~~Such loss-of-time benefits and for benefits paid by a self-insured employee welfare benefit plan. The lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. No A lien shall not be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss of time loss-of-time benefits on account of workers' compensation benefits.~~

(2) For purposes of this subdivision, "self-insured employee welfare benefit plan" means any plan, fund, or program that is established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, other than through the purchase of insurance, either of the following:

(A) Medical, surgical, or hospital care benefits.

(B) Monetary or other benefits in the event of sickness, accident, disability, death, or unemployment.

~~(4)~~

(d) When the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the referee shall determine the potential recovery and reduce the amount of the lien in the ratio of the

1 applicant's recovery to the potential recovery in full satisfaction
2 of its lien claim.

3 ~~(b) When a compromise of claim or an award is submitted to~~
4 ~~the appeals board, arbitrator, or settlement conference referee for~~
5 ~~approval, the parties shall file with the appeals board, arbitrator,~~
6 ~~or settlement conference referee any liens served on the parties.~~

7 ~~(c) Any lien claimant under Section 4903 or this section shall~~
8 ~~file its lien with the appeals board in writing upon a form approved~~
9 ~~by the appeals board. The lien shall be accompanied by a full~~
10 ~~statement or itemized voucher supporting the lien and justifying~~
11 ~~the right to reimbursement and proof of service upon the injured~~
12 ~~worker, or if deceased, upon the worker's dependents, the~~
13 ~~employer, the insurer, and the respective attorneys or other agents~~
14 ~~of record.~~

15 ~~(d) The appeals board shall file liens required by subdivision~~
16 ~~(e) immediately upon receipt. Numbers shall be assigned pursuant~~
17 ~~to subdivision (c) of Section 5500.~~

18 ~~(e) The changes made to this section by Senate Bill 457 of the~~
19 ~~2011-12 Regular Session do not modify in any way the rights or~~
20 ~~obligations of the following:~~

21 ~~(1) Any health care provider to file and prosecute a lien pursuant~~
22 ~~to subdivision (b) of Section 4903.~~

23 ~~(2) A payor to conduct utilization review pursuant to Section~~
24 ~~4610.~~

25 ~~(3) Any party in complying with the requirements under Section~~
26 ~~4903.~~

27 *SEC. 2. Section 1.5 of this bill incorporates all of the*
28 *substantive amendments to Section 4903.1 of the Labor Code*
29 *proposed by both this bill and Senate Bill 863. It shall only become*
30 *operative if (1) both bills are enacted and become effective on or*
31 *before January 1, 2013, (2) each bill amends Section 4903.1 of*
32 *the Labor Code, and (3) this bill is enacted after Senate Bill 863,*
33 *in which case Section 1 of this bill shall not become operative.*